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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

SHAHRIAR MAHGEREFTEH,

Plaintiff and Appellant,

v.

SHERWIN YADEGAR,

Defendant and Respondent.

B209830

(Los Angeles County  
Super. Ct. No. BC361902)

APPEAL from a judgment of the Superior Court of Los Angeles County. Alan S. Rosenfield, Judge. Affirmed.

Law Office of Robert F. Keehn and Robert F. Keehn for Plaintiff and Appellant.

Golob, Bragin & Sassoe and Dennis E. Golob for Defendant and Respondent.

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Appellant Shahriar Mahgerefteh, also known as Shawn Rad, a licensed dentist, and respondent Sherwin Yadegar, a nondentist, owned and operated a dental practice and orally agreed to purchase and develop some commercial property (the land transaction). After respondent refused to pay appellant his share of interest in the new property, appellant sued respondent for breach of contract, fraud and other claims. Respondent raised the defense of “illegality,” arguing that appellant’s lawsuit was barred because the claims arose out of an illegal dental partnership. After a bench trial, the trial court concluded that the parties’ partnership was illegal and that the land transaction arose out of and could not be severed from the illegal partnership. The trial court then dismissed the case on a motion for judgment pursuant to Code of Civil Procedure section 631.8.

On appeal, appellant does *not* challenge the trial court’s finding that he and respondent jointly owned or operated a dental practice in violation of the Business and Professions Code. Instead, he contends there was insufficient evidence to support the trial court’s finding that the land transaction was part of the illegal dental partnership. He also contends that even assuming the land transaction was not severable, the trial court erred in applying the illegality defense, given the equities of this case. We disagree and affirm the judgment.

## **FACTUAL AND PROCEDURAL BACKGROUND**

In 2001 respondent, who had a dental supply business, informed appellant, whom he had known for a number of years, that he was aware that a dentist, Dr. Kevin Frawley, was interested in selling his dental practice, known as the Dental Center. Following negotiations between appellant, respondent and Dr. Frawley, Dr. Frawley orally agreed to sell 50 percent of his practice for \$400,000, with a down payment of \$150,000 and the remaining balance to be secured by a promissory note. Appellant was to receive a salary of \$25,000 a month and respondent a salary of \$5,000 a month. Appellant and respondent each paid their \$75,000 share of the down payment directly to Dr. Frawley.

In March 2002, the parties entered into an agreement that was reduced to writing in which Dr. Frawley agreed to sell the entirety of the Dental Center for \$800,000, with a

down payment of \$250,000 and promissory notes for \$550,000. Dr. Frawley credited the \$150,000 previously paid by the parties, which left a down payment of \$100,000.

Appellant paid his \$50,000 share, and respondent paid his share of \$50,000 with post-dated checks from an account funded by appellant's dental practice. The buyers were identified as respondent individually and Shahriar Mahgerefteh, D.D.S., Inc. (D.D.S., Inc.). Later in 2004, during a Medi-Cal audit, appellant's father retyped the agreement, backdated it and appellant and Dr. Frawley re-signed the agreement, eliminating respondent's name. The application for the business tax certificate for the Dental Center identified respondent and Shahriar Mahgerefteh, D.D.S. as co-owners.

Appellant incorporated D.D.S., Inc. in early 2002, and testified that he was the only officer, director and shareholder and that respondent had no interest in the corporation. After March 2002, respondent incorporated his own corporation, Dental Center of Culver City, Inc. (DCCC). According to appellant, he was mistakenly named as an officer of DCCC. Appellant claimed to have no interest in DCCC, though he signed the fictitious business name statement of DCCC, and had signature authority to write checks from the DCCC account.

The parties agreed that respondent would manage the Dental Center. Respondent was responsible for interviewing, hiring and firing dental personnel, including firing at least one dentist, managing the front desk, payroll, marketing and billing insurance companies. D.D.S., Inc. paid DCCC for its services, including respondent's \$5,000 monthly salary, as well as the expenses and operations of the Dental Center, and DCCC in turn paid the bills, including rent. In other words, appellant's corporation funded respondent's corporation, and appellant did not consider the funds paid to DCCC to constitute a loan and had no expectation that they would be paid back. Respondent could take out money to be used for personal expenses from appellant's corporation, so long as it did not exceed \$5,000. When checks came into the dental practice they would be deposited in either appellant's corporate account or respondent's corporate account. Appellant and respondent opened joint accounts for the Dental Center and DCCC.

Around March 2003, appellant and respondent orally agreed to purchase and develop a parcel of commercial real estate down the street from the Dental Center which respondent had discovered (the new property). The purchase price was \$760,000, and the parties agreed that appellant would provide the down payment, with the balance of the purchase price to be financed through a bank loan obtained by respondent's father. The parties further agreed that appellant would contribute one-third of the loan payments and the cost of the land development in exchange for a one-third ownership interest in the new property and a return of two-thirds of appellant's investment plus interest.

In June 2003, the parties purchased the new property. For reasons that are not clear, title was taken in respondent's name alone. After respondent was sued by a former employee for sexual harassment, he quitclaimed the new property to his parents, who then quitclaimed it to Platinum Investment Group, LLC. It was appellant's idea to form Platinum and respondent's parents were the only members, but did not have any involvement in Platinum.

Respondent testified that he received a profit distribution from the dental practice in 2002. After that, his profit distribution went towards his share of the new property. He testified that the escrow money for the new property came from the parties' "joint partnership" profit and that the funding for the new property also came from the joint partnership. The contractor for the new property, who was respondent's uncle, wrote checks for the project on a checkbook given to him by respondent on a bank account in the name of Platinum Investment Group, LLC. Appellant acknowledged that respondent subtracted from the profits of the operation of the Dental Center the amount he owed to appellant for the new property. Appellant also admitted that his ledgers pertaining to the dental practice showed an allocation of costs and expenses between him and respondent regarding the new property and allocations between them concerning cash flow from the dental practice.

Appellant admitted at trial that the deal to purchase the new property involved respondent's condition that the Dental Center be moved to the new property. The parties had several discussions about moving the Dental Center to the new property.

Architectural plans were drawn up showing new dental offices, and appellant had several discussions with the architect. The existing structure on the new property was demolished and the plans originally called for a two-story building with subterranean parking, but were later changed to a single story. Appellant expected his lease payments at the new property to be substantially less. The lease on the Dental Center expired in 2006, though an extension was granted until 2009. Appellant eventually decided not to move the Dental Center to the new property.

Although appellant continued to make payments toward the new property after his decision not to relocate the Dental Center, he eventually stopped paying when he did not receive his one-third interest in the new property, despite repeated demands. Appellant alleged that he eventually paid approximately \$2.4 million toward the new property.

It is undisputed that the parties' relationship terminated toward the end of 2005. Appellant claimed that the relationship soured when he discovered that respondent was fraudulently billing insurance companies and stealing money from the dental practice. Respondent claimed that things soured due to excessive construction costs caused by appellant for additional parking for the new dental offices and his failure to ultimately relocate the Dental Center. The parties agreed to sell the Dental Center. They both signed the listing agreement and were identified as co-owners. At the time of trial, there was no buyer for the Dental Center.

Appellant sued respondent for breach of oral contract, promissory fraud, specific performance and related equitable claims, seeking his one-third interest in the new property and the return of his investment.<sup>1</sup> Respondent cross-claimed against appellant for breach of contract, declaratory relief and other claims with respect to a settlement agreement the parties had reached, pursuant to which appellant would purchase respondent's share of the Dental Center for \$393,125. Respondent alleged that appellant

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<sup>1</sup> Appellant also sued respondent's parents, Iradj Yadegar and Lily Yadegar, as well as Platinum Investment Group, LLC., but no appellate brief was submitted on behalf of these parties.

had paid only \$80,000. The cross-complaint sought a judicial determination as to whether the joint operation and ownership of the Dental Center constituted an illegal partnership in violation of the Business and Professions Code.<sup>2</sup> The parties stipulated to bifurcate the case so that respondent's "illegality" defense would be tried first to the court sitting without a jury. The proceedings were conducted over five days. After appellant rested his case, respondent moved for judgment pursuant to Code of Civil Procedure section 631.8.<sup>3</sup> After considering the parties' additional briefs and argument, the trial court ordered the case dismissed in its entirety and orally explained its reasoning. The court found that the parties' dental partnership was illegal, and that appellant "was a knowing and willing participant in going forward to continue the venture to make more money and chose to have blinders on, basically, to what his partner [respondent] was doing." Although the court questioned the credibility of both parties,<sup>4</sup> it found that the purpose of purchasing the new property "was not a mere separate transaction by two individuals," but "was all part and parcel with the intent to grow the illegal practice partnership." The court found that nearly all of the funding for the new property came

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<sup>2</sup> See Business and Professions Code sections 1625, subdivision (e), which provides that a person practices dentistry who "[m]anages or conducts as manager, proprietor, conductor, lessor, or otherwise, a place where dental operations are performed"; section 1626 ["[i]t is unlawful for any person to engage in the practice of dentistry in the state . . . unless the person has a valid, unexpired license or special permit from the board"]; section 1680, subdivision (c) [unprofessional conduct by a licensed dentist includes the "aiding or abetting of any unlicensed person to practice dentistry"]; and section 1670 [such unprofessional conduct constitutes grounds for the revocation or suspension of a license or being reprimanded or placed on probation].

<sup>3</sup> Code of Civil Procedure section 631.8, subdivision (a) allows a party to move for judgment after the other party has completed his presentation of evidence in a trial by the court, without waiving his right to present evidence in the event the motion is not granted.

<sup>4</sup> Respondent admitted at trial that he had pled guilty to conspiracy to commit insurance fraud.

from the revenues and bank accounts associated with the illegal dental practice. A judgment stating that “all claims in this action are based upon an illegal transaction involving illegal consideration” ordered dismissal of both the complaint and cross-complaint. This appeal followed.

## **DISCUSSION**

### **I. Standard of Review**

We review an appeal challenging an order granting a motion for judgment under Code of Civil Procedure section 631.8 for substantial evidence. In other words, “where a trial court’s factual finding is challenged on the ground there is no substantial evidence to sustain it, the power of the reviewing court begins and ends with the determination as to whether, on the whole record, there is substantial evidence, contradicted or uncontradicted, that will support the trial court’s determination.” (*San Diego Metropolitan Transit Development Bd. v. Handlery Hotel, Inc.* (1999) 73 Cal.App.4th 517, 528.) In making this determination, we review the evidence in the light most favorable to the respondent, resolve all evidentiary conflicts in favor of the prevailing party, and indulge in all reasonable inferences possible to uphold the trial court’s findings. (*Ibid.*) Likewise, where as here, neither party requested a statement of decision, we must presume that the trial court made whatever factual findings are necessary to sustain the judgment for which substantial evidence exists, and all intendments favor the ruling below. (*Michael U. v. Jamie B.* (1985) 39 Cal.3d 787, 792–793.) However, where the decisive facts are undisputed, we are confronted with a question of law and are not bound by the trial court’s findings. (*San Diego, supra*, at p. 528.)

### **II. The Land Transaction was Not Severable from the Illegal Dental Partnership**

Appellant points out that at the hearing on the motion to dismiss, the trial court made “three key factual finding-type comments”: The court found that the intent of the parties “from the very beginning of 2002, was to throw in together for the purpose of

making money in the practice of dentistry”; “The intent [in acquiring the new property] was to grow the business. Clearly, that was the intent. They both intended to grow the business”; and “They had a practice going on in one location. Another location becomes available, and the discussions centered around acquiring the new location and moving on and growing.”

Focusing solely on the last factual finding, appellant argues that it is not supported by substantial evidence. He points out that the evidence showed that he rejected the proposal to move the Dental Center to the new property shortly after respondent proposed the move; that he signed an extension of the Dental Center’s existing lease; and that he continued to fund the purchase and development of the new property for several years after the parties’ relocation discussions. He therefore concludes that the trial court erred in determining that the land transaction was not “an entirely independent, perfectly legal transaction.”

But appellant ignores other evidence that amply supports the trial court’s factual finding. Appellant admitted that he and respondent had several discussions about relocating the Dental Center to the new property; that respondent conditioned appellant’s receiving 30 percent of the interest in the new property on moving the dental practice to the new location; that appellant saw architectural plans showing dental offices at the new property; and that he even had discussions with the architect. More importantly, appellant largely ignores the trial court’s finding, which is also amply supported by the evidence, that nearly all of the funding for the new property came from the revenues and bank accounts associated with the illegal dental partnership. The majority of funds came from corporate bank accounts that were funded with revenues from the dental practice that was the object of the illegal partnership, and both the parties, and even the contractor, had access to these bank accounts. There was simply no evidence that either party funded the land transaction with personal funds that were wholly separate from those derived from the dental practice.

The test to determine whether a demand connected with an illegal transaction is capable of being enforced at law is whether the plaintiff requires the aid of the illegal



transaction to establish his case. (*C. I. T. Corp. v. Breckenridge* (1944) 63 Cal.App.2d 198, 200; *Hooper v. Barranti* (1947) 81 Cal.App.2d 570, 576 (*Hooper*); *Aaker v. Smith* (1948) 87 Cal.App.2d 36, 47.) Here, appellant must source his entitlement to the new property back to the illegal dental partnership and the dental practice run by that partnership. In other words, to prove any amount he contributed toward the new property, appellant must look to the illegal dental practice. “It is well settled that: ‘If an agreement grows immediately out of, or is connected with, an illegal or immoral act or agreement, a court cannot lend its aid to enforce it, though it is in fact a new agreement. If the connection between an original illegal transaction and a new promise can be traced, if the latter is connected with, and grows out of, the former, no matter how many times and in how many different forms it may be renewed, it cannot form the basis of a recovery.’” (*Miller v. California Roofing Co.* (1942) 55 Cal.App.2d 136, 141.)

Irrespective of whether the Dental Center was actually moved to the new property, as the trial court found, the evidence established that the parties intended to use the revenue from the illegal dental practice to create even more revenue for their illegal partnership by way of the land transaction. “If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void.” (Civ. Code, § 1608; see also *Yoo v. Jho* (2007) 147 Cal.App.4th 1249, 1255 [finding that whether the parties’ business sold a small or large percentage of counterfeit goods was irrelevant because the business was substantially involved in the sale of counterfeit goods, thus rendering the object of the business purchase agreement illegal].) Where the valid provisions of an agreement are “so inextricably interwoven with the illegal that they cannot be separated therefrom,” the agreement is entirely void. (*Smith v. California Thorn Cordage, Inc.* (1933) 129 Cal.App. 93, 99.) Where the “main purpose” of an agreement is illegal, the “secondary stipulations fall with it.” (*Ibid.*) Thus, illegality of an agreement is a complete defense (*Homami v. Iranzadi* (1989) 211 Cal.App.3d 1104, 1112), and the parties will be left where the court found them (*Tiedje v. Aluminum Taper Milling Co.* (1956) 46 Cal.2d 450, 454).

The three cases on which appellant relies are distinguishable. In *Denning v. Taber* (1945) 70 Cal.App.2d 253, the court held that the plaintiff could pursue the defendant's promises of accounting and payment because they were made *after* the parties voluntarily terminated their illegal partnership running a saloon. Because "the possession by one party of property belonging to the other party is acknowledged, the source from which that property was derived becomes immaterial and the construction of the legality of the defunct contract is unnecessary." (*Id.* at pp. 258–259.) Here, by contrast, the parties entered into the land transaction *during* their illegal dental partnership as part and parcel of the goal of making more money for their partnership, and it is necessary to trace the funds for the new property back to the illegal dental practice, which would require the aid of the court to enforce an illegal agreement. Likewise, the appellate court in *Wagner v. Worrell* (1946) 76 Cal.App.2d 172, allowed a lawsuit "to determine the ownership of a fund of money the origin of which was a course of conduct lasting for 16 years, but long since terminated by the death of the appellant's testator." (*Id.* at p. 180.) The court noted there was nothing executory about it and "[w]hatever the arrangement was, whether legal or illegal, it has been wholly executed and closed." (*Ibid.*) Finally, in *Keene v. Harling* (1964) 61 Cal.2d 318, 323, the court found there was substantial evidence to support the finding that the sale of illegal pinball machines was of such minor importance that it did not "taint" the otherwise legal consideration.

In sum, pursuant to our obligation to review the evidence in the light most favorable to the respondent and to resolve all evidentiary conflicts in favor of the prevailing party, we are satisfied that substantial evidence supports the trial court's factual finding that the parties' oral agreement to purchase and develop the new property arose directly out of the illegal dental partnership and involved illegal consideration. Substantial evidence supports the trial court's determination to dismiss appellant's action.

### **III. There is No Exception to the Illegality Defense**

Notwithstanding the above authorities, appellant argues that the rule foreclosing the enforceability of illegal contracts is not inflexible and is subject to exceptions. He contends that the trial court erred in not finding an exception here.

Because there is no statement of decision, we presume the trial court made whatever factual findings are necessary to support the judgment. Where, as here, the parties' oral contract cannot be enforced without reliance upon the illegal dental partnership, we are not inclined to find that any exception exists. But even applying the factors set forth in the case upon which appellant relies, *Norwood v. Judd* (1949) 93 Cal.App.2d 276 (*Norwood*), we find no applicable exception here.

In *Norwood*, the parties had a partnership agreement to conduct a contracting business, which they ran for approximately two years. The defendant obtained a contractor's license in his own name, but failed to obtain one in the name of the partnership, though he could have done so. After the plaintiff left the business, the parties agreed the defendant would wind down the business and divide the remaining assets with the plaintiff in accordance with an agreed-upon formula. (*Norwood v. Judd*, *supra*, 93 Cal.App.2d at p. 279.) The defendant made one payment and no others, and the plaintiff sued. The reviewing court reversed the trial court's ruling that the lawsuit could not proceed because the parties had engaged in an illegal partnership. The *Norwood* court concluded that the rule that courts will not lend aid to the enforcement of an illegal agreement should not be applied when: (1) the public cannot be protected because the transaction has been completed, (2) no serious moral turpitude is involved, (3) the defendant is the one guilty of the greatest moral fault, and (4) the defendant will be unjustly enriched at the expense of the plaintiff. (*Id.* at p. 289.) In reaching this conclusion, the court expressly noted the parties had not engaged in a business prohibited by statute or public policy and that a partnership license easily could have been obtained. (*Id.* at p. 283.)

Applying these factors here, appellant first argues that the public cannot be protected because the parties' illegal dental partnership ended prior to the lawsuit being

filed. But the *Norwood* court distinguished the facts of its case from those in *Hooper*, *supra*, 81 Cal.App.2d 570, in which the parties' agreement to run a tavern constituted an illegal partnership because one of the partners was a noncitizen who could not obtain a liquor license. The *Norwood* court noted that in the *Hooper* case the parties' agreement provided for the operation of the bar for 15 months without a proper license. This violated a statute that sought to protect the public from having a noncitizen operate a bar and sell liquor. Likewise here, the parties ran their dental practice through their illegal partnership for nearly five years, fully aware that the partnership was illegal. And it is clear that respondent was actively involved in the conduct of the dental practice.

Appellant next argues that there was no serious moral turpitude involved here because there was no evidence that respondent ever treated dental patients or that patient care and treatment were ever compromised. But appellant concedes that he knew from early on, if not from the outset of the parties' partnership, that a layperson could not be part of a dental practice. Yet, appellant gave respondent extensive authority to interview, hire and fire dental personnel, including in one instance firing a dentist. Aside from actually practicing dentistry, it appears that respondent managed most aspects of the dental practice. Under these circumstances, substantial evidence supports the trial court's implied finding that the dental consumer was put at risk. Furthermore, unlike the *Norwood* case, this was not a situation involving a "technical formality" where a license could have been easily obtained, thus eliminating any violation of law. (*Norwood v. Judd*, *supra*, 93 Cal.App.2d at p. 290.) Respondent was not qualified to apply for a license to practice dentistry. Thus, like the *Hooper* case, "it was impossible for the parties to have entered into a lawful agreement of partnership." (*Norwood*, *supra*, at p. 290.)

Third, appellant argues that respondent was the more blameworthy of the two. Appellant points out that he tried to maintain some separation between the parties by setting up his own professional corporation. Appellant ignores that respondent also set up a professional corporation and that funds from the dental practice flowed between the two corporations and were used to fund the land transaction. Appellant also points out

that respondent committed insurance fraud and quitclaimed the new property to his parents when he was being sued for sexual harassment. But, again, appellant ignores that in 2004 he participated in a cover-up at the time of a Medi-Cal audit by signing a backdated purchase agreement for the Dental Center that eliminated respondent's name as a buyer.

Finally, appellant argues that application of the illegality defense would unjustly enrich respondent. While appellant concedes that respondent conditioned appellant's receiving an ownership interest in the new property on relocating the Dental Center to the new property, appellant points out that he continued to fund the new property after he decided not to relocate the Dental Center and that at least half the profits from the dental practice belong to him. Appellant relies on *Johnson v. Johnson* (1987) 192 Cal.App.3d 551 (*Johnson*), in which a military veteran used his GI loan eligibility to finance the purchase of a house for his elderly parents, even though the parents could afford the house without the loan and provided the money for the payments. Title was necessarily taken in the son's name, but he never transferred the title to his parents, though he had promised to do so. Seven years later, the son informed his widowed mother that he wanted to sell the house and that she would have to move. She then brought an action seeking declaration of a resulting trust and prevailed, both at the trial level and on appeal. (*Id.* at pp. 554–555.) Appellant argues that *Johnson* teaches that the unjust enrichment factor is at least as important a consideration in addressing whether the parties are *in pari delecto* as is the weighing of their relative fault. But the *Johnson* court concluded that “each” of the *Norwood* criteria was satisfied, and found that there was no serious moral turpitude on the part of the mother and that the son clearly had the greatest moral fault. (*Johnson, supra*, at p. 557.)

Here, application of the illegality defense may result in respondent being unjustly enriched, which is a “harsh result,” as the trial court noted. But in light of the fact that the other three *Norwood* criteria do not substantially favor appellant, we cannot conclude that the trial court erred in dismissing appellant's case. “The reason for judicial refusal to enforce a contract which has an illegal object ‘is not that the courts are unaware of

possible injustice between the parties, and that the defendant may be left in possession of some benefit he should in good conscience turn over to the plaintiff, but that this consideration is outweighed by the importance of deterring illegal conduct. Knowing that they will receive no help from the courts and must trust completely to each other's good faith, the parties are less likely to enter an illegal arrangement in the first place.'” (*Yoo v. Jho*, *supra*, 147 Cal.App.4th at p. 1255.)

Appellant makes one final argument that application of the illegality defense should not apply to his tort cause of action for promissory fraud against respondent. He relies on *Grant v. Weatherholt* (1954) 123 Cal.App.2d 34, 42, in which the court held that an unlicensed contractor's action for fraud was not barred because the applicable Business and Professions Code only barred actions arising out of contracts with unlicensed contractors. We note that in *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 1001, the California Supreme Court stopped short of disapproving *Grant*, but limited it to its facts. Here, the facts of our case are different. They do not involve an unlicensed contractor seeking to recover compensation for work he was fraudulently induced to perform that could only legally be performed by a licensed contractor. In our case, appellant's claims for damages based on fraud relate to a land transaction that cannot reasonably be severed from the illegal dental partnership.

**DISPOSITION**

The judgment is affirmed. Respondent is entitled to his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.

DOI TODD

We concur:

\_\_\_\_\_, P. J.

BOREN

\_\_\_\_\_, J.

ASHMANN-GERST